



San Juan County

Community Development & Planning

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CRITICAL AREA FREQUENTLY ASKED QUESTIONS

- **What are “Critical Areas”?**

In Washington State, Critical Areas are identified in the Growth Management Act (GMA) and include: wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas (both marine and upland). The GMA requires cities and counties to have regulations and other programs in place to protect these areas. The County’s first Critical Area regulations were adopted in 1991.

- **Why is San Juan County updating the Critical Area regulations?**

The GMA required review and if necessary update of Critical Area regulations prior to December 2006. Counties that are not in compliance with the GMA are subject to financial penalties.

State requirements have changed since the County’s existing Critical Area regulations were adopted. For example, additional fish and wildlife habitat must be protected (e.g. that for the Peregrine falcon, Marbled murrelet, Southern resident orca and Chinook salmon) and Counties must now consider the “Best Available Science” when evaluating the effectiveness of current or proposed regulations. Though the extent of the changes are not yet know, some modification of existing regulations will be necessary to meet current State requirements.

- **Why is it important to protect Critical Areas?**

There are several reasons for protecting Critical Areas: to protect people and property from natural hazards; to protect the environment and maintain a healthy ecosystem; to maintain the quality of life in the San Juan Islands; and to support business and industry that is based on a healthy environment and good quality of life.

- **What functions and values are associated with Critical Areas?**

Functions and values provided by Critical Areas include water quality protection and enhancement; food chain support; fish and wildlife habitat; flood storage, conveyance, and attenuation; ground water recharge and discharge; erosion control; wave attenuation; protection from natural hazards; and recreation.

- **What fish and wildlife habitats are required to be protected?**

Not all fish and wildlife habitat is defined as a Critical Area that must be protected. Those that are defined as Critical Areas include: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; shellfish areas; kelp and eelgrass beds; herring, surf smelt, and sand lance-spawning areas; naturally occurring

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ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and State natural area preserves and natural resource conservation areas.

▪ **What is the process for reviewing and updating the Critical Area regulations?**

The process for reviewing and updating the Critical Area regulations is shown on the project work plan which is available on the CAO web site. A study characterizing local wetlands has been completed, maps showing known Critical Areas in the County have been compiled, and a synthesis of the Best Available Science related to San Juan County Critical Areas is nearing completion and will soon be adopted by the County Council. During May and June of this year, consulting scientists, project planners and the public will be asked to review existing regulations and identify any deficiencies or suggestions. After hearing from the public, the County Council will discuss options and provide policy level guidance on the approaches to be used in the updated regulations. Staff will then prepare draft amendments for public hearing and consideration by the County Planning Commission. When completed, Planning Commission recommendations will be forwarded to the County Council for a final decision.

▪ **What is “Best Available Science”?**

According to State guidance, Best Available Science (BAS) means current scientific information derived from research, monitoring, inventory, survey, modeling, assessment, synthesis, and expert opinion that is logical and reasonable; based on quantitative analysis; peer reviewed; used in the appropriate context; based on accepted methods; and well referenced. A copy of the State guidance on BAS (adopted into the Washington Administrative Code) is included as Appendix 1-A of the County’s Best Available Science Synthesis.

▪ **How were the Best Available Science (BAS) documents used in the synthesis selected?**

Potential BAS documents were selected from several sources: the County’s (and consultants’) existing collections of scientific documents; BAS lists from state agencies and other jurisdictions; and submittals from the general public, agencies, and organizations. The index of titles initially available for consideration contained more than 1,900 entries and was made available to all authors of the synthesis. Each author selected the most relevant documents, reviewed them for consistency with the BAS criteria, and compiled the results into the County’s BAS Synthesis.

▪ **Was different weight given to reports that were not peer-reviewed?**

Yes. Per the criteria set forth in WAC 365-195-905, the sources that met the highest standards of scientific research were given the greatest consideration, and those that did not (e.g., those that were not peer-reviewed) were given less weight.

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- **Why are scientific reports from other regions or states being included in the BAS for San Juan County?**

Although it is best to use local science, local science that meets the BAS criteria is often not available. In these cases, the authors of the BAS Synthesis had to use other applicable studies, particularly studies conducted in other areas of the Puget Sound, or in locations with environments similar to the San Juan Islands. In addition, some science involves processes that are similar regardless of location, with results that are universally applicable.

- **How was the wetland map created?**

The map of “Possible Wetlands” was made using recent color aerial imagery, LiDAR topographic imagery, countywide soils maps, and (where available) maps or sketches from field inspections conducted previously by wetland professionals. Methods are described in detail in Appendix 2A-1 of the BAS report. The map misses many apparent wetlands and is however not a substitute for parcel-scale field-based delineation of wetland boundaries by a qualified wetland professional.

- **Can an area be a wetland even if it is not inundated with water year-round?**

Yes, an area such as this can meet the definition of a wetland, depending on the soil characteristics and duration of annual inundation. Please see Chapter 2 (Wetlands) of the BAS synthesis document for a detailed explanation of the classification of wetland types.

- **What is the state of the health of fish and wildlife here in the San Juan Islands?**

This question drives a large body of scientific research and is the subject of much discussion. Due to the complexity of the potential answers, this question cannot be adequately answered within this “FAQs” framework. Please see the BAS Synthesis for discussion of the status of wildlife in San Juan County.

- **At what levels do pollutants harm fish and other wildlife?**

This is a complicated area of research. Each pollutant is different, and the effects vary depending on the species in question, the location (e.g. areas where pollutants are rapidly dispersed versus areas where they are retained), and other sources of stress on that species (e.g. the presence of other pollutants or changes to habitat such as increased temperature, increased acidity of water, or reduced availability of food). Synergistic effects can also occur, where the effect of two or more factors combine to result in an effect greater than the sum of their individual effects.

- **How will Critical Area protection be implemented?**

All designated Critical Areas must be protected, but not all Critical Areas must be protected in

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the same manner or to the same degree. The required standard of protection is to either prevent adverse impacts, or to mitigate those impacts in a way that results in no net loss of the functions and values of the Critical Areas. Various strategies may be employed. Examples include the use of habitat management plans (e.g. like those currently used to protect Bald eagle habitat); enhancing degraded habitat to offset new impacts; buffer zones (areas with little or no development) within specified distances from some Critical Areas; and requiring the use of Best Management Practices (BMPs).

▪ **What are the proposed changes to the regulations?**

At this time, there are no proposed changes to the existing regulations. In the next few months staff and the County's consultants will be working with the Planning Commission and County Council to draft any proposed changes.

▪ **What options will be available for properties that have difficulty meeting the new requirements?**

Although there are currently no specific proposals, it is anticipated that there will be several options including reasonable use exceptions, variances, and site-specific plans.

▪ **What is the difference between a buffer and a setback?**

Generally speaking, setbacks limit the placement of structures, and buffers limit both the placement of structures and activities within the buffer. Any proposed regulations will include specific information on what can and cannot occur within setbacks and buffers.

▪ **Doesn't the GMA require the County to balance environmental preservation with economic interests?**

The GMA, which is the legal foundation for the Critical Areas Ordinance (CAO), includes (among others) the goals "*Protect the environment*" and "*Encourage sustainable economic development.*" However, the GMA also includes requirements, which are given precedent over goals. One of the requirements of the GMA is to protect Critical Areas. The GMA does not contain a requirement regarding the economy or economic development.

▪ **Isn't the environmental impact of homes being built on the shoreline negligible compared to other causes of marine contamination such as inadequately treated sewage outflow from Victoria?**

It is likely that the impact of activities directly in or adjacent to San Juan County Critical Areas is greater than that of distant activities. The magnitude of the ratio between environmental impacts originating in the San Juans and those originating elsewhere does not exempt the County from the requirement to designate and protect Critical Areas. It is important that each

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land owner do their part to minimize the negative impacts associated with their land use and development.

- **Shouldn't the County prove that existing land uses and development are negatively impacting Critical Areas before considering changes to the regulations?**

The GMA requires the County to consider the Best Available Science and protect Critical Areas. It does not require the County to conduct studies or prove the extent of existing problems. Even if conditions in the County were pristine, we would still be required to review the science and adopt measures to protect Critical Areas.

- **Is there scientific information showing that residential and commercial development is contributing pollutants to our marine waters?**

Several studies have been conducted throughout the County to measure pollutants in streams and the marine environment (see the Best Available Science Synthesis for a more complete discussion).

- **Don't modern septic systems and stormwater regulations take care of whatever problems might be caused by development near streams, wetlands and the marine shoreline?**

For septic systems, in most cases yes. Stormwater effects however, vary widely from site to site and the stormwater regulations are not designed to mitigate every possible negative impact. The stormwater regulations, guidance on shoreline/stream buffers, and the research on how land development changes the flow of ground and surface water, all make it clear that shoreline/stream/ wetland buffers and upland stormwater management systems are both necessary. Finally, in some cases, additional vegetation protection measures are necessary to maintain well functioning aquatic ecosystems that support fish and wildlife habitat.

- **This is a rural county. How can we have stormwater problems?**

San Juan County is more suburban than rural in its density and patterns of development, and much of the existing development is located along the shoreline. Also, because of the large number of non-resident homes, the built environment (roads, driveways, impervious surfaces) exceeds that which would typically support a population of 16,000. As in other communities, this development changes the timing and amount of runoff, as well as the pollutants found in stormwater, and has the potential to negatively affect aquatic ecosystems, food webs, and sensitive species.

- **Will the CAO regulations apply to existing development?**

The CAO regulations will only apply to new development, including additions and clearing and grading. The regulations will not require any changes to existing, legally constructed development.

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▪ **What can and can't I do with a legal nonconforming structure?**

A legal nonconforming structure is a structure which conformed to dimensional requirements (such as setbacks, height limits, or lot coverage limits) at the time it was built, but which no longer conforms due to later changes in the law. Nonconforming structures are subject to different rules when they are located within 200 feet of shorelines of the state, as opposed to upland areas. In general, a nonconforming structure may continue to be used, and may be maintained, repaired, and replaced in its present location. In some instances nonconforming structures may be enlarged or expanded, so long as certain conditions are met. If a nonconforming structure is severely damaged, rules regarding when and whether it may be reconstructed in its original location differ depending on if the structure is located in the shoreline or an upland area. Currently, provisions for nonconforming structures in the shoreline are governed by State regulation. The County does however, have the ability to adopt local standards as part of the upcoming amendments to our local shoreline regulations (see the Shoreline Master Program project website at: <http://www.sanjuanco.com/smp/smpdocs.aspx>)

Finally, to help address concerns about nonconforming uses and structures, in 2010 the State Legislature adopted Engrossed House Bill 1653, which included the following provision:

“a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government’s development regulations to protect Critical Areas may continue as a conforming use and may be redeveloped or modified if a) the redevelopment or modification is consistent with the local government’s master program; and b) the local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government’s development regulations to protect Critical Areas.”

▪ **How will the CAO regulations be coordinated with the Shoreline Master Program (SMP) update?**

RCW 36.70A.060 (2) requires that the County adopt regulations to protect 5 different types of Critical Area: wetlands, aquifer recharge areas, frequently flooded areas, geologically hazardous areas and fish and wildlife habitat conservation areas. These areas are to be protected whether in the shoreline or in upland areas.

In 2010 the State Legislature adopted Engrossed House Bill 1653, which affirmed that Critical Area regulations adopted under Growth Management Act procedures apply within shorelines of the State until the Department of Ecology approves their incorporation into a jurisdiction’s Shoreline Master Program in accordance with Shoreline Management Act procedures. The County’s revised Critical Area regulations will apply to both upland areas and the shoreline, however the shoreline provisions will eventually be incorporated into the Shoreline Master Program (SMP) when it is updated.

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The County has been working to update its CAO for several years and is expected to complete the project by December 2011. The SMP update process has just begun. The Council does not expect to consider draft SMP regulations until the latter half of 2012, and when completed, the revised regulations must still be approved by the Department of Ecology, which can take several months. In the intervening period, the provisions of the CAO will address development in the shoreline to ensure that Critical Areas are protected.

- **How can I learn more?**

Project background information, the Best Available Science (BAS) documents and meeting notifications can be accessed on the San Juan County website at: <http://www.sanjuanco.com/cao/default.aspx>. The County also maintains an e-mail listserv that sends project information directly to all interested parties. To be added to the listserv or to get additional information please contact Janice Biletnikoff or Shireene Hale at the San Juan County Community Development and Planning Department via phone at 360-370-7572/360-370-7569 or e-mail at janiceb@sanjuanco.com / shireeneh@sanjuanco.com.